

OGC 76-2441
6 August 1976

OGC Has Reviewed

MEMORANDUM FOR: Chief, Benefits and Services Division

STATINTL FROM :
Office of General Counsel

SUBJECT : Business Agreements Between the EAA and
Agency Employees

1. Factual Situation: In reference to the attached correspondence you have inquired whether or not, and under what circumstances, the Agency-"sponsored" EAA may enter into business agreements with Agency employees or companies that they represent.

2. Conclusion: The EAA may enter into business agreements with Agency employees if:

a. The employee fully discloses his personal interests in the agreement to his office supervisor exercising hiring authority and to the EAA, and it is determined by the employee's supervisor that the proposed business agreement will not substantially affect the integrity of the employee's Government service;

b. The employee takes no part in any of the business negotiations as an officer, director, or employee of the EAA;

c. The offer or agreement is negotiated and processed exactly as would occur with a similar offer or agreement from a non-Agency businessman; and

d. The subject agreement will not result in or create the appearance of using public office for private gain or of giving preferential treatment to any organization or person.

However, in light of the sensitive nature of the Agency's operations and subsection (d), above, this Office strongly recommends that the EAA refrain from business dealings with Agency employees whenever a conflict of interest may be reasonably expected to arise. If you have any doubts about the propriety of any given arrangement, please feel free to consult this Office.

3. Full Disclosure and Written Approval: 18 U.S.C.A. section 208 contains a statutory prohibition against an Agency employee contracting as an individual or as an officer of a private company with an Agency-sponsored association.

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the Executive Branch of the United States Government, [or] of any independent agency of the United States...participates personally and substantially as a Government officer or employee...in a contract...in which, to his knowledge, he... [or an] organization in which he is serving as officer...or employee..., has a financial interest--shall be fined not more than \$10,000, or imprisoned not more than 2 years, or both.

That same section, however, sets forth the exception that a Government employee may contract as an individual with the Government if full disclosure is made and written approval is obtained.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the... contract...and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee....

The statute cited above may or may not apply to the EAA, as there is some legal question concerning the "Government" status of the EAA or other similar associations in other agencies. Nevertheless, we recommend that full disclosure be required in all such contracts.

4. The Appearance of Preferential Treatment: Executive Order 11222, 3 C.F.R. 306 (8 May 1965), states at section 201(c) that Government employees shall be most cautious to avoid even the appearance of evil.

It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of--

- (1) using public office for private gain;
- (2) giving preferential treatment to any organization or person....

It is therefore suggested that the employee, his supervisor and the EAA must examine each occurring situation on a case-by-case basis to determine if the integrity of the Agency, the EAA, or the employee could possibly be jeopardized. And, as stated previously, the nature of the Agency is such that almost any contract with Agency personnel could result in a conflict of interest and should therefore be carefully scrutinized.



STATINTL